

EXHIBIT 11

CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NUMBER: 04-11924-RGS

IAN J. BROWN, JAMES BROWN AND BARBARA BROWN,
Plaintiffs,

VS

UNITED STATES OF AMERICA, VERIZON NEW ENGLAND,
INC. and BOSTON EDISON COMPANY d/b/a NSTAR
ELECTRIC,
Defendants.

~~~~~

30(b)(6) DEPOSITION OF U.S. NAVY BY  
ARTHUR R. HAYES, III, taken on behalf of Verizon  
New England, Inc., pursuant to the applicable  
provisions of the Massachusetts Rules of Civil  
Procedure, before Ayako Odanaka, Notary Public,  
Certified Shorthand Reporter and Registered  
Professional Reporter within and for the  
Commonwealth of Massachusetts, at the Offices of  
Prince, Lobel, Glovsky & Tye, LLP, 585  
Commercial Street, Boston, Massachusetts, on  
April 28, 2005, at 11:14 a.m., as follows:

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1 30(b)(6) DEPOSITION OF U.S. NAVY BY  
2 ARTHUR R. HAYES, III  
3 APRIL 28, 2005  
4 PROCEEDINGS:

5 ARTHUR R. HAYES, III, the deponent,  
6 having been satisfactorily identified and  
7 duly sworn by the Notary Public, was  
8 examined and testified as follows.

9 EXAMINATION

10 BY-MR. LEWIN:

11 Q. Good morning, Mr. Hayes. My name  
12 is Josh Lewin, as we met this morning.  
13 Have you ever been deposed before?

14 A. Ah, yes.

15 Q. Okay. Just to review briefly, I'll  
16 be asking you questions; you'll be  
17 answering those questions. It's important  
18 that you wait until I finish asking the  
19 question so the court reporter can take  
20 everything down.

21 A. Okay.

22 Q. If you need a break at any time,  
23 just let me know, and we can stop.

24 MR. LEWIN: The usual

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1 stipulations?

2 MR. WILMOT: Usual  
3 stipulations. Also I just want to state  
4 for the record that Mr. Hayes is the  
5 30(b)(6) designee on the behalf of the  
6 Navy, but he is testifying solely as to  
7 Number 3 on your Exhibit A to the  
8 deposition notice.

9 MR. LEWIN: And along those  
10 same lines, today's deposition is being  
11 conducted pursuant to the court's order of  
12 February 23rd, 2005.

13 As stated by Attorney Wilmot, we'll  
14 be limited to topic Number 3 on the  
15 deposition notice. Verizon reserves the  
16 right to renote the deposition of the  
17 USA during the normal course of discovery  
18 as to these topics or other topics germane  
19 to the case at that time.

20 MR. CHARNAS: May we go off  
21 the record for a moment?

22 MR. LEWIN: We can.

23 (Discussion off the record).

24 MR. WILMOT: For the record,

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1 we just want to state that Mr. Hayes, as  
2 I said, he is testifying solely as to  
3 Number 3 on Exhibit A of Verizon's  
4 30(b)(6) deposition notice. He's not  
5 testifying as to Numbers 4 and 5 because  
6 the Navy has no information as to Numbers  
7 4 and 5.

8 BY MR. LEWIN:

9 Q. Okay. Mr. Hayes, could you state  
10 your name for the record?

11 A. Arthur --

12 (Interruption).

13 BY MR. LEWIN:

14 Q. Okay. Could you state your name  
15 for the record?

16 A. Arthur R. Hayes.

17 Q. And Mr. Hayes, who is your current  
18 employer?

19 A. Department of Defense, the  
20 engineering field activity northeast  
21 located in Philadelphia.

22 Q. And how long have you been employed  
23 there?

24 A. Twenty-four years, 25 years.

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1 Q. And does the Department of Defense  
2 encompass both the Navy and the Air Force?

3 A. Yes.

4 Q. Could you briefly summarize your  
5 job responsibilities?

6 A. I work in the real estate  
7 department as a cartographer/real estate  
8 specialist handling all Navy acquisitions,  
9 transfers, easements, permits for the area  
10 AOR, they call it, area of responsibility  
11 for the Navy in the New England 11 -- ten  
12 state area now.

13 Q. And is that just for the Navy?

14 A. Just for the Navy, yes.

15 Q. And do you know if there's someone  
16 with the same responsibilities with respect  
17 to Air Force property?

18 A. Yes, I believe so.

19 Q. Do you know who that person is?

20 A. I think it would be the corp of  
21 engineers.

22 (Reporter requested  
23 clarification).

24 THE WITNESS: Corp -- corp



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3 (Pages 9 to 12)

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| <p style="text-align: center;">Page 9</p> <p>1 of engineers</p> <p>2 BY MR. LEWIN:</p> <p>3 Q. Do you know of a specific person</p> <p>4 that has your -- the same job</p> <p>5 responsibilities with respect to the Air</p> <p>6 Force?</p> <p>7 A. No, no, I don't.</p> <p>8 Q. You're here in response to a</p> <p>9 deposition notice in this case; is that</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And have you had a chance to look</p> <p>13 at that deposition notice?</p> <p>14 A. Yes. Briefly.</p> <p>15 MR. LEWIN: Let me -- can I</p> <p>16 mark this as Exhibit 1?</p> <p>17 (Exhibit-1, Deposition</p> <p>18 Notice, marked for identification).</p> <p>19 BY MR. LEWIN:</p> <p>20 Q. Mr. Hayes, I'm showing you what's</p> <p>21 been marked as Hayes Exhibit 1. Do you</p> <p>22 recognize this document?</p> <p>23 A. (Witness viewing document). Yes.</p> <p>24 Q. Could I ask you to turn to the</p>                                                                                                                                                                                                         | <p style="text-align: center;">Page 10</p> <p>1 third page?</p> <p>2 A. (Witness complying).</p> <p>3 Q. Is it your understanding that</p> <p>4 you're testifying as to topic Number 3 of</p> <p>5 Exhibit A?</p> <p>6 A. (Witness viewing document). Yes.</p> <p>7 That's right.</p> <p>8 Q. By the way, Mr. Hayes, you brought</p> <p>9 a few documents with you today; is that</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 MR. LEWIN: Can we mark</p> <p>13 those as two and three?</p> <p>14 (Exhibit-2, Map; Exhibit-3,</p> <p>15 Map, marked for identification).</p> <p>16 BY MR. LEWIN:</p> <p>17 Q. Mr. Hayes, let's start with what's</p> <p>18 just been marked as Hayes Exhibit Number</p> <p>19 2. Could you briefly tell me what this</p> <p>20 document is?</p> <p>21 A. This is a Navy's -- let me back up</p> <p>22 a minute. This is an original print that</p> <p>23 I made myself from the original mylar I</p> <p>24 maintain in our office. And what it</p>                                                                                                                    |
| <p style="text-align: center;">Page 11</p> <p>1 depicts is the portion that was</p> <p>2 transferred to Navy from the Air Force</p> <p>3 dated March 11, '77. The number of acres,</p> <p>4 36.65, the jurisdiction, which is noted.</p> <p>5 And then what I had done a few</p> <p>6 years ago, we had the perimeter</p> <p>7 resurveyed, and this isn't really</p> <p>8 applicable, but Navy acquired this portion</p> <p>9 of property, and that's why we had changed</p> <p>10 the external boundary.</p> <p>11 MR. CHARNAS: Excuse me,</p> <p>12 sir, when you say "this," it doesn't show</p> <p>13 up on the record when you point to</p> <p>14 something, so you have to describe --</p> <p>15 THE WITNESS: Oh, I'm sorry.</p> <p>16 I was pointing to a property north of the</p> <p>17 actual transferred property. It's a deed</p> <p>18 area for a nine acre tract of land that</p> <p>19 we, Navy, acquired from AF McGovern,</p> <p>20 September 20th, 1954, which was added to</p> <p>21 the transferred property from the Air</p> <p>22 Force.</p> <p>23 BY MR. LEWIN:</p> <p>24 Q. And, Mr. Hayes, you indicated that</p> | <p style="text-align: center;">Page 12</p> <p>1 this is an original copy?</p> <p>2 A. Yes.</p> <p>3 Q. And you said it was made from?</p> <p>4 A. A mylar.</p> <p>5 Q. And what is the mylar?</p> <p>6 A. Well, a mylar is like a -- it's a</p> <p>7 -- it's a transparent drawing that you add</p> <p>8 and delete as to acquisitions, permits and</p> <p>9 easements, and the Navy maintains this in</p> <p>10 a map -- several map drawers, and it's</p> <p>11 constantly updated.</p> <p>12 Q. Okay. And this is an original copy</p> <p>13 of the mylar from one of those map</p> <p>14 drawers?</p> <p>15 A. Yes, that's correct.</p> <p>16 Q. Okay. And Exhibit Number 3, could</p> <p>17 you tell me what Exhibit Number 3 is?</p> <p>18 A. (Witness viewing document). Number</p> <p>19 3 is a map of the Laurence Hanscom Field</p> <p>20 real estate map that was sent to us from</p> <p>21 the Air Force at the time of the transfer.</p> <p>22 And this was in the file along with the</p> <p>23 transfer documentation when Navy took</p> <p>24 ownership of the property in question. It</p> |



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4 (Pages 13 to 16)

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;">Page 13</p> <p>1 just shows -- I'm sorry.</p> <p>2 Q. And where is this document kept by</p> <p>3 the Navy?</p> <p>4 A. Also in the file.</p> <p>5 Q. And this is a true and accurate</p> <p>6 copy?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. I'd like to step back a</p> <p>9 little bit. I'd like to ask you what you</p> <p>10 did to prepare today to testify as to</p> <p>11 topic Number 3 in Exhibit 1?</p> <p>12 A. Again, I reviewed the deposition</p> <p>13 information, and I made a print of the</p> <p>14 Navy's real estate summary map showing the</p> <p>15 ownership of Naval Weapon Station, Bedford.</p> <p>16 Q. Did you review any other documents</p> <p>17 besides the two maps that you brought with</p> <p>18 you today?</p> <p>19 A. Yes, I think there was a town map</p> <p>20 that we had showing the pole location.</p> <p>21 (Reporter requested</p> <p>22 clarification).</p> <p>23 THE WITNESS: The utility</p> <p>24 pole location.</p> | <p style="text-align: center;">Page 14</p> <p>1 A. And based on that, Town of Bedford,</p> <p>2 Department of Public Works, they had the</p> <p>3 pole locations located along Hanscom Road,</p> <p>4 and I transferred that location to the</p> <p>5 real estate summary map of Navy's.</p> <p>6 MR. CHARNAS: When you said</p> <p>7 Hanscom Road, did you mean Hartwell Road?</p> <p>8 THE WITNESS: Hartwell Road,</p> <p>9 I'm sorry.</p> <p>10 MR. LEWIN: Could we mark</p> <p>11 this as Exhibit 4, is it --</p> <p>12 MR. CHARNAS: Yes.</p> <p>13 MR. LEWIN: Four.</p> <p>14 (Exhibit-4, Map, marked for</p> <p>15 identification).</p> <p>16 BY MR. LEWIN:</p> <p>17 Q. You indicated, Mr. Hayes, that you</p> <p>18 received this from the Town of Bedford; is</p> <p>19 that correct?</p> <p>20 A. Well, indirectly. I think that you</p> <p>21 e-mailed --</p> <p>22 MR. WILMOT: Go off the</p> <p>23 record for a minute.</p> <p>24 MR. LEWIN: Sure.</p>                                                    |
| <p style="text-align: center;">Page 15</p> <p>1 (Discussion off the record).</p> <p>2 BY MR. LEWIN:</p> <p>3 Q. Mr. Hayes, do you know where in the</p> <p>4 Navy this document came from?</p> <p>5 A. No, I don't.</p> <p>6 Q. Okay. And what was the purpose of</p> <p>7 reviewing this document?</p> <p>8 A. The utility pole placement of pole</p> <p>9 Number 37.</p> <p>10 Q. And is that the sole information</p> <p>11 you gleaned from this document --</p> <p>12 A. Yes.</p> <p>13 Q. -- in preparation for today?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Did you speak to anyone</p> <p>16 before today's deposition to be able to</p> <p>17 answer questions with respect to topic</p> <p>18 Number 3?</p> <p>19 MR. WILMOT: Objection. You</p> <p>20 mean not attorney-client privilege?</p> <p>21 MR. LEWIN: Yes.</p> <p>22 BY MR. LEWIN:</p> <p>23 Q. Who did you speak to in preparation</p> <p>24 for today's deposition?</p>                                                        | <p style="text-align: center;">Page 16</p> <p>1 A. Damian.</p> <p>2 Q. Did you contact anyone else in the</p> <p>3 Navy concerning ownership of Hartwell Road?</p> <p>4 A. No, I didn't.</p> <p>5 Q. How about the Town of Bedford?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did you take any other</p> <p>8 actions besides looking at these maps in</p> <p>9 preparation for the deposition today?</p> <p>10 A. No.</p> <p>11 Q. Okay. Have you been able to make</p> <p>12 a determination as to the government's --</p> <p>13 as to the Navy's interest in Hartwell</p> <p>14 Road?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And again, can you tell me</p> <p>17 what the basis of that determination is?</p> <p>18 A. The transfer document at the time</p> <p>19 the Air Force transferred the property to</p> <p>20 the Navy.</p> <p>21 Q. Uh-huh. Let me step back a second.</p> <p>22 Can you tell me the process you went</p> <p>23 through to locate these two maps?</p> <p>24 A. Okay. The Exhibit 3, is it this</p> |



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5 (Pages 17 to 20)

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;">Page 17</p> <p>1 one?</p> <p>2 Q. This is two and this is three.</p> <p>3 A. All right. Exhibit 3 was in the</p> <p>4 transfer document file that I maintain in</p> <p>5 the cadastre records in my office. And</p> <p>6 from that information and this map,</p> <p>7 Exhibit 3, Exhibit 2 was generated,</p> <p>8 showing -- now in that transfer document,</p> <p>9 there's a legal description that comes</p> <p>10 with it, with the bearings and dimensions,</p> <p>11 going around the perimeter of the property</p> <p>12 and listing that in addition to the</p> <p>13 buildings within as to what was being</p> <p>14 transferred from the Air Force to the</p> <p>15 Navy.</p> <p>16 Q. All right. Let me step back. Do</p> <p>17 you keep files or maps by their location?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So do you have a file for</p> <p>20 Hanscom Air Force base?</p> <p>21 A. No.</p> <p>22 Q. Okay. How were you able to locate</p> <p>23 Exhibit Number 3 in preparation for</p> <p>24 today's deposition?</p> | <p style="text-align: center;">Page 18</p> <p>1 A. By looking up the transfer document</p> <p>2 for Naval Weapon Station, Bedford.</p> <p>3 Q. So do you have some sort of file</p> <p>4 with respect to the naval weapons -- what</p> <p>5 was the facility you stated?</p> <p>6 A. It's on there, Naval Weapons</p> <p>7 Industrial Reserve Plant.</p> <p>8 Q. Okay.</p> <p>9 A. NIROP, they -- the acronym.</p> <p>10 Q. And do you have a file for property</p> <p>11 owned by the Navy with respect to -- to</p> <p>12 the NIROP?</p> <p>13 A. In Bedford, yes.</p> <p>14 Q. Okay. And is that how you located</p> <p>15 Hayes Exhibit Number 2?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. As well as Hayes Exhibit</p> <p>18 Number 3?</p> <p>19 A. Yes.</p> <p>20 Q. And with respect to the NIROP</p> <p>21 facility in Bedford, were there any other</p> <p>22 maps?</p> <p>23 A. No.</p> <p>24 Q. How about other documents?</p>                                                                                                                                   |
| <p style="text-align: center;">Page 19</p> <p>1 A. No, other than the transfer</p> <p>2 document, no.</p> <p>3 Q. And when you say "transfer</p> <p>4 document," are you referring to Hayes</p> <p>5 Exhibit Number 2?</p> <p>6 A. Well, the transfer document, it's</p> <p>7 Navy's DD1354.</p> <p>8 Q. Is that a form of some sort?</p> <p>9 A. It's a form that the government has</p> <p>10 when they transfer property from one</p> <p>11 agency to another agency.</p> <p>12 Q. Did you bring that form with you</p> <p>13 today?</p> <p>14 A. No, I didn't.</p> <p>15 Q. Is all of the property that the</p> <p>16 Navy owns in Bedford, was that property</p> <p>17 transferred from the Air Force?</p> <p>18 A. Not all of it. The nine acre</p> <p>19 portion at the north end, the Navy</p> <p>20 acquired.</p> <p>21 Q. Aside from the nine-acre piece of</p> <p>22 property that you just referenced, is all</p> <p>23 of the remaining property that the Navy</p> <p>24 owns, was that acquired from the Air</p>                                        | <p style="text-align: center;">Page 20</p> <p>1 Force?</p> <p>2 A. Correct.</p> <p>3 Q. So there would be no other deeds or</p> <p>4 transferred documents from other</p> <p>5 individuals to the Navy.</p> <p>6 A. Correct.</p> <p>7 Q. Can you show me -- or first, what</p> <p>8 interest does the Navy have in property</p> <p>9 over which Hartwell Road runs?</p> <p>10 A. Well, the portion of Hartwell Road</p> <p>11 that runs through the transferred property</p> <p>12 Navy owns in fee, the underlying land of</p> <p>13 the road.</p> <p>14 Q. And if we could go to Exhibit</p> <p>15 Number 2 -- Hayes Exhibit Number 2 first,</p> <p>16 could you point on this map and also state</p> <p>17 for the record where you're pointing to</p> <p>18 the area of Hartwell Road which runs</p> <p>19 through the property you've just</p> <p>20 referenced?</p> <p>21 A. Okay, beginning in the northeast</p> <p>22 portion of the property, boundary</p> <p>23 reference, course Number 9, Hartwell Road</p> <p>24 enters the property running southwesterly</p> |



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6 (Pages 21 to 24)

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;">Page 21</p> <p>1 to a boundary reference course Number 18.</p> <p>2 And that's the only portion of Hartwell</p> <p>3 Road that the Navy owns in fee.</p> <p>4 Q. Are you aware of whether Hartwell</p> <p>5 Road is designated as a public way under</p> <p>6 Massachusetts state law?</p> <p>7 A. That I'm not sure of.</p> <p>8 Q. You don't know?</p> <p>9 A. No.</p> <p>10 Q. Do you know whether there are any</p> <p>11 restrictions on that piece of road as to</p> <p>12 who may travel along Hartwell Road?</p> <p>13 A. No, I don't know.</p> <p>14 Q. Do you know whether the Navy</p> <p>15 maintains that road?</p> <p>16 A. No, I don't know. I don't have</p> <p>17 those records.</p> <p>18 Q. Do you know whether the Navy has</p> <p>19 granted the Town of Bedford an easement</p> <p>20 over the -- over Hartwell Road?</p> <p>21 A. No, we haven't.</p> <p>22 Q. You have not?</p> <p>23 A. We have not.</p> <p>24 Q. And what is the basis of your</p>                                    | <p style="text-align: center;">Page 22</p> <p>1 statement that the Navy has not granted</p> <p>2 the Town of Bedford an easement?</p> <p>3 A. If Navy did, there would be noted</p> <p>4 on the summary map. If I could reference</p> <p>5 the utilities easements Navy needed up</p> <p>6 here for whatever reason, so we went to</p> <p>7 the property owner, in this case,</p> <p>8 Massachusetts Port Authority, and acquired</p> <p>9 an easement, utility easement.</p> <p>10 If we had turned around to the Town</p> <p>11 of Bedford and granted them a right-of-way</p> <p>12 easement for that portion of Hartwell</p> <p>13 Road, there would be a note with the date</p> <p>14 and whether it was in perpetuity or</p> <p>15 exactly what the transfer information was</p> <p>16 or the easement grant. It would be noted.</p> <p>17 Q. If the Air Force had granted an</p> <p>18 easement over Hartwell Road before it</p> <p>19 transferred this property to the Navy,</p> <p>20 would that be indicated on this map?</p> <p>21 A. No, no it wouldn't.</p> <p>22 Q. If the Air Force had granted such</p> <p>23 an easement would that be noted anywhere</p> <p>24 in your files?</p> |
| <p style="text-align: center;">Page 23</p> <p>1 A. No, it wouldn't.</p> <p>2 Q. Would it be noted on the form that</p> <p>3 you referenced, the transfer form, from</p> <p>4 the Air Force to the Navy?</p> <p>5 A. No, it would not.</p> <p>6 Q. So are you able to determine</p> <p>7 whether the town has a right-of-way</p> <p>8 easement over Hartwell Road at this time?</p> <p>9 A. No, I'm not.</p> <p>10 Q. You indicated that -- or what could</p> <p>11 you -- I may have already asked this</p> <p>12 question but --</p> <p>13 A. Okay.</p> <p>14 Q. What is the legal interest that the</p> <p>15 government has in this portion of Hartwell</p> <p>16 Road?</p> <p>17 A. Ownership and fee in the underlying</p> <p>18 road.</p> <p>19 Q. And the basis of your statement</p> <p>20 that the ownership interest is in fee,</p> <p>21 what is the basis of your knowledge?</p> <p>22 A. Just going back from when the Air</p> <p>23 Force first acquired it back in -- take a</p> <p>24 quick look, '52, February 25th, '52.</p> | <p style="text-align: center;">Page 24</p> <p>1 Q. And for the record, you're</p> <p>2 referencing Hayes Exhibit Number 3.</p> <p>3 A. Correct. Yes.</p> <p>4 Q. Okay. And could you show me where</p> <p>5 on Hayes Exhibit Number 3 you just --</p> <p>6 A. In the tract register of</p> <p>7 acquisition after July, 1940, military.</p> <p>8 Table located on the map.</p> <p>9 Q. And could you tell me the tract</p> <p>10 register that you just referenced, what</p> <p>11 information is conveyed in that tract</p> <p>12 register?</p> <p>13 A. The tract is A101. It shows the</p> <p>14 landowner as the Commonwealth of</p> <p>15 Massachusetts. It shows the acquisition</p> <p>16 in fee over 42 acres of land. And it</p> <p>17 shows in the remarks column, the date of</p> <p>18 the deed, which shows February 25th, 1952.</p> <p>19 Q. And does Hayes Exhibit Number 3, on</p> <p>20 the tract register that you just</p> <p>21 referenced is that referencing land that</p> <p>22 was transferred in some interest to the</p> <p>23 Air Force?</p> <p>24 A. Acquired by the Air Force, yes.</p>                                                                                |



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7 (Pages 25 to 28)

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1 Q. And Tract A101, which you just  
2 referenced, does that encompass the same  
3 land that we've been looking at in Hayes  
4 Number 2?  
5 A. With the exception of the trailer  
6 park housing that was excluded from the  
7 transfer to Navy.  
8 Q. And is the trailer park housing  
9 depicted in Hayes Exhibit Number 2?  
10 A. It's not identified on the map, but  
11 where it cuts it out on the westerly side.  
12 Q. For the record, the deponent was  
13 indicating --  
14 A. Portion north of Hartwell.  
15 Q. -- a portion north of Hartwell Road  
16 cut out by a line that is depicted as 18,  
17 19, 20, 21, 22, 23 and 24; is that  
18 correct?  
19 A. That's correct.  
20 Q. So to your knowledge, does the Air  
21 Force still own the property in that cut  
22 out portion?  
23 A. I really can't answer that. I  
24 don't know.

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1 Q. Mr. Hayes, in Exhibit Number 2,  
2 Hartwell Road appears to pass south of the  
3 portion you've indicated was retained by  
4 the Air Force when it transferred to the  
5 Navy; is that correct?  
6 A. (Witness viewing document). That's  
7 correct.  
8 Q. So to your knowledge, does the Navy  
9 own that portion of Hartwell Road, which  
10 is immediately south?  
11 A. Yes.  
12 Q. And south of the cut out portion  
13 that the Air Force retained?  
14 A. Yes, that's correct.  
15 Q. Okay. Mr. Hayes, if the department  
16 of Navy had subsequently transferred any  
17 of the land which is designated as Tract  
18 A101 in Exhibit Number 3, would you have a  
19 record of that transfer?  
20 A. No.  
21 Q. And when I say subsequently, I say  
22 subsequently to the date of Exhibit Number  
23 3, which appears to be January 1952.  
24 A. Yeah -- no, because this is an Air

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1 Force map.  
2 MR. CALLAHAN: "This" being,  
3 what exhibit are you referring to?  
4 MR. CHARNAS: Exhibit 3.  
5 THE WITNESS: Exhibit 3.  
6 BY MR. LEWIN:  
7 Q. Mr. Hayes, what is the date of  
8 Exhibit Number 2?  
9 A. (Witness viewing document).  
10 9/9/74, 1974.  
11 Q. There appear to be some date  
12 references above that. What are those  
13 date references to?  
14 A. (Witness viewing document). Well,  
15 they were amendments to -- well, amendment  
16 Number 2, 36.65 acre transferred from Air  
17 Force, that was dated June 7th, 1977, even  
18 though that was the transfer in March of  
19 '77. And through the legal description  
20 and the transfer documentation, this map  
21 was created. Then there were permits  
22 added, which is identified as Amendment 3  
23 in June 8th day, '79.  
24 Perimeter of station was surveyed

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1 in 1980. This was correction Number 4.  
2 And all courses and distances were revised  
3 accordingly. That was dated October 9th,  
4 1980.  
5 And amendment or correction Number  
6 5 -- and this is the survey I was telling  
7 you about. We had the perimeter again  
8 surveyed on September 18th, 1992 and  
9 acreage was advised accordingly -- revised  
10 accordingly.  
11 Q. Could I ask you a question?  
12 A. Yes.  
13 Q. This came -- this map, you  
14 indicated, came from a mylar sheet which  
15 you keep in your office.  
16 A. Yes.  
17 Q. So if I'm understanding this  
18 correctly, the mylar sheet was updated --  
19 was originated on 9/9/74.  
20 A. Correct.  
21 Q. And then updated on each of these  
22 dates.  
23 A. Correct.  
24 Q. Okay. And is it your practice to



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1 update the map whenever a transfer is  
 2 made?  
 3 A. Yes.  
 4 Q. So any transfer that was made to or  
 5 from the Navy with respect to land  
 6 depicted in this map occurring after  
 7 9/9/74, that transfer would be depicted on  
 8 this map; is that correct?  
 9 A. That's correct. Yes.  
 10 Q. Okay. So to your knowledge, this  
 11 map is the most up-to-date depiction of  
 12 land owned by the Navy which is depicted  
 13 on the map.  
 14 A. That's correct.  
 15 Q. Okay. Mr. Hayes, do you have any  
 16 knowledge about traffic on Hartwell Road?  
 17 A. No, I don't.  
 18 Q. Have you ever been on Hartwell  
 19 Road?  
 20 A. No, I haven't.  
 21 MR. LEWIN: I have no more  
 22 questions.  
 23 EXAMINATION  
 24 BY-MR.CHARNAS:

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1 Q. Mr. Hayes, I'm Scott Charnas. I  
 2 represent Ian Brown and his family. I  
 3 just have a few questions.  
 4 A. Okay.  
 5 Q. First of all, sir, are you a  
 6 civilian employee of the Department of  
 7 Defense?  
 8 A. Yes.  
 9 Q. How long have you worked for the  
 10 Department of Defense?  
 11 A. Twenty-five years.  
 12 Q. And have you, during that entire  
 13 time, worked for the Naval Division within  
 14 the Department of Defense?  
 15 A. Yes.  
 16 Q. And what is your title?  
 17 A. Realty specialist, cartographer.  
 18 Q. And how long have you held that  
 19 title, approximately?  
 20 A. Since 17 years.  
 21 Q. Now, sir, if I understand -- Well,  
 22 let me strike that.  
 23 At some point, did you make a  
 24 determination as to the appropriate and

Page 31

1 proper location of pole Number 37?  
 2 A. Only based on that map I had.  
 3 Q. That was my question. Your basis  
 4 of where pole Number 37 is, is -- that is  
 5 based on Exhibit 4; is that right?  
 6 A. Correct, the Town.  
 7 Q. That's the Town of Bedford  
 8 Department of Public Works drawing or map;  
 9 is that right?  
 10 A. Yes, that's right.  
 11 Q. And you don't know where that came  
 12 from.  
 13 A. No.  
 14 Q. Now, do you have an understanding  
 15 as to where on Exhibit 3 pole Number 37  
 16 is?  
 17 A. Well, based on that map, yeah, I  
 18 could approximate it.  
 19 Q. Let me ask you this.  
 20 A. Okay.  
 21 Q. Is it your understanding that pole  
 22 Number 30 -- Well, let me back up and  
 23 strike that.  
 24 On Exhibit 3, there is a shaded or

Page 32

1 mostly shaded area which is surrounded by  
 2 a green marker line; is that right?  
 3 A. (Witness viewing document). That's  
 4 correct.  
 5 Q. Did you put that green marker line  
 6 on Exhibit 3?  
 7 A. Yes, I did.  
 8 Q. And what did you intend to denote  
 9 by that green marker line?  
 10 A. The portion of property acquired by  
 11 the Air Force in '52, which was the 42  
 12 acres. Tract 101.  
 13 Q. Is it your understanding, sir, that  
 14 pole Number 37, that is, the location of  
 15 pole Number 37 is encompassed within that  
 16 green bordered area?  
 17 A. Yes.  
 18 Q. Can you point where you believe  
 19 that is? And I realize it's just  
 20 approximately.  
 21 A. Approximately right here  
 22 (indicating).  
 23 Q. You're pointing on to --  
 24 A. The northeasterly side of the



30 (b) (6) ARTHUR R. HAYES, III 04/28/05

9 (Pages 33 to 36)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;">Page 33</p> <p>1 tract.</p> <p>2 Q. Okay. And the south side of</p> <p>3 Hartwell Road; is that fair to say?</p> <p>4 A. South side of Hartwell Road.</p> <p>5 Q. So as far as the Navy is concerned,</p> <p>6 speaking through you, the area where pole</p> <p>7 Number 37 is located, or at least was</p> <p>8 located on January 4th, 2002, that area</p> <p>9 both on the north and south side of</p> <p>10 Hartwell Road was owned by the Navy?</p> <p>11 A. Yes.</p> <p>12 Q. Now, sir, in regard to Exhibit 2,</p> <p>13 you've told us several times that this</p> <p>14 drawing or map came from a mylar in the</p> <p>15 Navy's records; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Is it fair to say that you yourself</p> <p>18 added something to this map in preparation</p> <p>19 for this deposition?</p> <p>20 A. Yes, I did.</p> <p>21 Q. And tell us what this was, sir.</p> <p>22 A. Approximate location of utility</p> <p>23 pole Number 37.</p> <p>24 Q. And again, this Exhibit 2</p> | <p style="text-align: center;">Page 34</p> <p>1 demonstrates that pole Number 37 was</p> <p>2 located on land owned by the Navy.</p> <p>3 A. Yes.</p> <p>4 Q. And that's true as of January 2nd,</p> <p>5 2002.</p> <p>6 A. I don't think this is dated. I</p> <p>7 can't really say that.</p> <p>8 Q. When you say "this," you're</p> <p>9 pointing to Exhibit 4?</p> <p>10 A. Exhibit 4.</p> <p>11 Q. Just bear with me a moment. I'm</p> <p>12 just about finished.</p> <p>13 And you've told us that the Navy</p> <p>14 owns a section of Hartwell Road,</p> <p>15 specifically the section that runs through</p> <p>16 the gray area with the green border around</p> <p>17 it, which is part of Exhibit 3; is that</p> <p>18 right?</p> <p>19 A. That's correct.</p> <p>20 Q. And is it fair to say that the</p> <p>21 Navy has owned that -- Strike that.</p> <p>22 So the Navy or Air Force had owned</p> <p>23 that land in January 4th of 2002.</p> <p>24 A. Navy.</p>                                                                   |
| <p style="text-align: center;">Page 35</p> <p>1 Q. Is it fair to say that -- Well,</p> <p>2 strike that.</p> <p>3 For how long has the Navy owned</p> <p>4 that land, that is where the Hartwell Road</p> <p>5 is within that green bordered area on</p> <p>6 Exhibit 3?</p> <p>7 A. Since March, 1977.</p> <p>8 Q. And before March of 1977, is it</p> <p>9 fair to say that the Air Force owned that</p> <p>10 section of Hartwell Road?</p> <p>11 A. That's correct.</p> <p>12 Q. Is it fair to say that the Air</p> <p>13 Force owned that section of Hartwell Road</p> <p>14 since approximately 1952?</p> <p>15 A. That's correct.</p> <p>16 MR. CHARNAS: That's all I</p> <p>17 have. Thank you, sir.</p> <p>18 THE WITNESS: You're</p> <p>19 welcome.</p> <p>20 MR. CALLAHAN: Just have a</p> <p>21 few questions.</p> <p>22 EXAMINATION</p> <p>23 BY-MR.CALLAHAN:</p> <p>24 Q. Where is your office located?</p>                                                                                                                                    | <p style="text-align: center;">Page 36</p> <p>1 A. Just south of Philadelphia airport</p> <p>2 in Tinicum Township.</p> <p>3 Q. Have you ever been to the Hanscom</p> <p>4 Air Force Base?</p> <p>5 A. No.</p> <p>6 Q. When you need to interact with</p> <p>7 people at Hanscom Air Force Base or people</p> <p>8 -- Strike that. Let me back up.</p> <p>9 Are there still Navy personnel</p> <p>10 situated at the Hanscom Air Force base</p> <p>11 location?</p> <p>12 A. As far as I know.</p> <p>13 Q. Do you have occasion to interact</p> <p>14 with any of the people there in connection</p> <p>15 with your duties as a realty specialist?</p> <p>16 A. No.</p> <p>17 Q. The document that you identified as</p> <p>18 DD1354, the transfer document, is that</p> <p>19 similar to what a lay person would</p> <p>20 understand as kind of a transfer deed,</p> <p>21 deed of transfer?</p> <p>22 A. Yes. Yes, because it's</p> <p>23 transferring the Air Force's right to that</p> <p>24 portion of property, and they transferred</p> |



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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION  
NO. 04-11924-RGS

IAN J. BROWN, JAMES BROWN and  
BARBARA BROWN  
Plaintiffs

v.

UNITED STATES OF AMERICA,  
VERIZON NEW ENGLAND, INC. and  
BOSTON EDISON COMPANY d/b/a  
NSTAR ELECTRIC  
Defendants

To: All counsel of record.

**NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendant and Cross-Claim Plaintiff, Verizon New England, Inc. will take the deposition upon oral examination of the United States of America (the "USA") by a person or persons to be designated by the USA pursuant to Fed. R. Civ. P. 30(b)(6).

The deposition will be held at the offices of Prince, Lobel, Glovsky & Tye LLP, 585 Commercial Street, Boston, MA 02110, on **April 14, 2005 at 9:30 a.m.** before a notary public or other official authorized by law to administer oaths from day to day until completed.

Please note that, pursuant to Fed. R. Civ. P. 30(b)(6), the USA is required to designate one or more persons who consent to testify on its behalf and to matters known

EXHIBIT

Cronin I  
4/28/05 A.O.

EXHIBIT

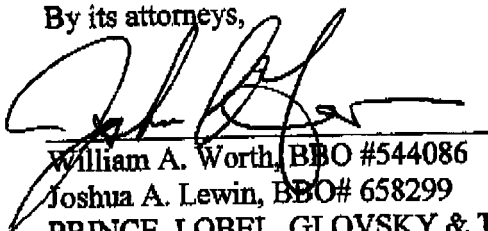
Hayes I  
4/28/05 A.O.

or reasonably available to the USA with respect to the matters set forth in Exhibit A.

You are invited to attend and cross-examine.

VERIZON NEW ENGLAND, INC.

By its attorneys,



William A. Worth, BBO #544086

Joshua A. Lewin, BBO# 658299

PRINCE, LOBEL, GLOVSKY & TYE LLP

585 Commercial Street

Boston, MA 02109

(617) 456-8000

Date: March 28, 2005

**EXHIBIT A**

1. The ownership and control of the guardrail depicted in the photographs and Motor Vehicle Accident Police Report attached hereto as Exhibits 1 and 2 as of January 4, 2004.
2. The installation and maintenance of the guardrail depicted in the photographs and Motor Vehicle Accident Police Report attached hereto as Exhibits 1 and 2.
3. The USA's right, title, or interest in Hartwell Road in Bedford, Massachusetts as of January 4, 2004.
4. The USA's control and/or maintenance of Hartwell Road in Bedford, Massachusetts as of January 4, 2004.
5. Any patrols or public safety work performed by the USA on Hartwell Road in Bedford, Massachusetts on or before January 4, 2004.
6. The USA's right, title or interest in the location depicted as parcel A on the map attached hereto as Exhibit 3.
7. The USA's right, title or interest in the building located on parcel A at which the plaintiff, Lieutenant Ian Brown, worked in his capacity as an employee of the Electronic Systems Center.
8. The use of Hartwell Road by employees of the Electronic Systems Center to access the Electronic Systems Center's buildings located on parcel A on the map attached hereto as Exhibit 3 as of January 4, 2004.
9. The USA's right, title or interest as of January 4, 2004, in the land immediately adjacent to Hartwell Road upon which the guardrail depicted in the photographs and Motor Vehicle Accident Police Report attached hereto as Exhibits 1 and 2 was situated.

exhibits 2 and 3 to the  
Deposition of Arthur Hayes,  
III are too large to be  
scanned. They are on file and  
may be viewed at the Clerk's  
office